

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MAX CHARLES KNOPP

Claimant

VS.

**CORONADO ENGINEERING, AND
POWER AD COMPANY**

Respondent

AND

**COMMERCIAL UNION INSURANCE CO., AND
ALLIED MUTUAL INSURANCE**

Insurance Carriers

AND

KANSAS WORKERS COMPENSATION FUND

Docket Nos. 192,511 &
192,512

ORDER

Claimant appeals from a February 2, 1995, Order of Administrative Law Judge George R. Robertson which denied claimant's request for medical and temporary total disability benefits.

ISSUES

On appeal, claimant contends the Administrative Law Judge exceeded his jurisdiction in denying benefits because the evidence establishes that claimant incurred expenses for medical treatment and is in need of further treatment as a result of accidental injury which arose out of and in the course of the claimant's employment with both respondents. Respondent, Power Ad Company, denies accident arising out of and in the course of employment and denies timely notice was given to respondent by claimant of his alleged accident. Respondent, Power Ad Company, also raises the defense of a subsequent intervening accident. Respondent, Coronado Engineering, denies that claimant's pre-existing condition was aggravated during his employment with Coronado Engineering.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding by the Administrative Law Judge that claimant had not given timely and sufficient notice of accident to respondent, Power Ad Company, as required by K.S.A. 44-520a, should be affirmed. This issue turns primarily upon the credibility and believability of the witnesses. The Administrative Law Judge had an opportunity to observe the testimony of the witnesses. He determined the testimony of Roger Naylor to be more credible and believable than that given by claimant and his wife on the issue of notice. In light of that fact, and based upon the Appeals Board review of the record as a whole, the finding by the Administrative Law Judge in Docket Number 192,512, is affirmed.

In Docket Number 192,511 claimant has failed to carry his burden of proof that his current need for medical treatment is the result of personal injury by accident which arose out of and in the course of his employment with respondent, Coronado Engineering. The only medical evidence corresponding to the dates of claimant's employment with respondent, Coronado Engineering, is a July 5, 1994, report by Dr. James W. Neumann, which relates claimant's condition to his employment. Dr. Neumann performed an EMG and nerve conduction studies on claimant on February 14, 1994, which revealed bilateral carpal tunnel syndrome. He has not seen claimant since that date. We agree with the finding by the Administrative Law Judge that Dr. Neumann's report is not relevant to the claimant's employment with Coronado Engineering as the claimant did not begin working for Coronado Engineering until June of 1994. At the time he was examined by Dr. Neumann, claimant was employed with respondent, Power Ad Company. The Appeals Board finds the evidence of aggravation of his pre-existing carpal tunnel syndrome during claimant's period of employment with Coronado Engineering to be insufficient to carry his burden.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 2, 1995, Order of Administrative Law Judge George R. Robertson should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert German, Salina, KS
 Kendall R. Cunningham, Wichita, KS
 Jeffrey King, Salina, KS
 George R. Robertson, Administrative Law Judge
 George Gomez, Director